DOCUMENT RESUME

ED 216 456 EA 014 640

AUTHOR Green, Edward T.
TITLE Collective Bargaining in Education, 1981: The State of the Art.
PUB DATE 19 Aug 81
NOTE 12p.; Paper presented at the Annual Meeting of the National Conference of Professors of Educational Administration (35th, Seattle, WA, August 16-21, 1981).

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Collective Bargaining; *Contracts; Educational Administration; Elementary Secondary Education; Employer Employee Relationship; *Government Employees; Labor Relations; Negotiation Impasses; Planning; Public Opinion; School Districts; *Teacher Strikes; Unions

ABSTRACT

Whether or not collective bargaining in the public sector becomes a universal practice, work stoppages cannot be considered an acceptable method for resolving contract disputes. Public opposition to strikes by teachers is growing. School districts and teachers must realize that collective bargaining is a process of compromise, and that candor, respect, flexibility, and mutual agreement on the issues are vital to successful negotiation. Mutual planning of the bargaining timetable can allow adequate preparation, permitting both sides to negotiate from facts rather than from emotions. Careful selection of expert negotiators with adequate time to prepare for and perform their functions is crucial. Among the more important aspects of successful collective bargaining are precise specification of allowable grievance issues and procedures, attention to provisions concerning fringe benefits and job security, and fair administration of contracts once they are negotiated. (Author/PGD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED216456

"COLLECTIVE BARGAINING IN EDUCATION, 1981: THE STATE OF THE ART"

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Edward T. Green

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

PRESENTED AT
THE THIRTY - FIFTH ANNUAL NATIONAL CONFERENCE
OF PROFESSORS OF EDUCATIONAL ADMINISTRATION
SEATTLE, WASHINGTON - AUGUST 19, 1981

PRESENTER
EDWARD T. GREEN, ASSOCIATE PROFESSOR
EDUCATIONAL ADMINISTRATION AND SUPERVISION
GEORGIA SOUTHERN COLLEGE
STATESBORO, GEORGIA

EA 014 640

Collective Bargaining in Education, 1981: The State of the Art

Since 1962, collective bargaining in education has developed at an impressive rate. By September, 1980, thirty-five states had enacted laws permitting bargaining by teachers (two of these - Alabama & Nebraska - under "meet and confer" provisions). States not, at the time of that survey, providing for teacher collective bargaining were: Arizona, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, North Dakota, South Carolina, Texas, Utah, West Virginia, Wyoming.

At the outset, advocates of collective bargaining espoused the equity argument - namely, that employees in the public sector should have the same rights as those in the private sector. Should, then, public sector employees give up all the statutory rights which they hold, i.e. pensions, tenure, sick and other leave provisions, reductions in force provisions, duty-free lunch periods, protection in evaluation, - to mention a few - in favor of incorporating them in a contract, as in the private sector?

There are some very difficult aspects to bargaining in the public sector - particularly in the field of education. Work stopages raise some fundamental issues. Brought into very sharp focus by the PATCO strike, and the subsequent action by the President in declaring that those who struck illegally against the United States would forfeit their jobs, we look at the number of strikes which have occurred in school districts. We have been warned by the NEA about the potential for strikes against school districts at the opening of the 1981-82 school year. The issues being charged as contributory are not, unsurprisingly, wages but, rather, such items as job security, reduction in force, control of the curriculum and related items. One often hears that these are "non-economic" items but any students of educational finance would be hard put to demonstrate that contract items are non-economic.

Even though dollar amounts may not be attached to contract items, costs do accrue through the hidden costs of the bargaining process. We have yet to see cause and effect studies on the real costs of bargaining and the impact of this process and the ultimate contract upon the learning process.

The work stoppages issue brings with it a very real dilemma. If the prohibition against the strikes is to be enforced, then there must be a means whereby impasses must be resolved short of a work stoppage. It has been determined that, even where there are provisions for mandatory impasse resolution, strikes do occur. Perhaps, the federal action in the PATCO situation will bring into sharp focus the need for a mechanism to resolve the differences which could not be solved in the bargaining process. Just what such a mechanism might involve is not clear; it could be the requirement that the fact finder's report be binding upon both parties, it could be that binding arbitration be the required resolution, it could be that an arbitrator would select the last best offer of one of the parties as the answer, it could be that a court would be called upon to render a decision which would resolve the impasse, or it could be by referendum. The nation can no longer afford the spectacle of public employees who, either by oath or law, or agreement stipulating that they will not strike, nonetheless violate the oath, law or agreement by engaging in an illegal strike. If we believe in the democratic way of life, we must be bound by the law of the land or be prepared to participate in anarchy. If the law must be changed, then, that must be accomplished through the established procedures. We have come to that time when the conservative tide is rolling. Passing pro-union legislation at this time could be very difficult. Various models for dealing with the bargaining process have been proposed. The fact remains, however, that no model will work unless the parties want it to. There may be some very persuasive reasons for the bargaining process to work and the parties might be well advised to

heed them. A clue to the real need lies in the 12th Annual Poll of the Public's Attitude Toward the Public Schools.

On the question - Should public school teachers be permitted to strike? - the report read as follows:

"A conservative trend in most areas of American life widened by survey findings parallels increasing public opposition to strikes by public school teachers. In 1975, when this question was last put to the public in this series, a slight majority opposed strikes. The vote then was 48% opposed to strike and 45% in favor, with 7% having no opinion. When the same question was asked in the present survey, 52% opposed strikes, 40% favored them, and 8% had no opinion.

"The greatest changes were found among college-educated respondents, a group that favored strikes five years ago by a 52% to 44% margin and now opposes strikes by nearly the same margin, 51% to 43%.

"In the Eastern states opinion was equally divided in 1975: A total of 46% favored strikes; 46% opposed them. Today the comparable figures are 34% in favor, 58% opposed.

"Interestingly, parents of children attending the public schools have less objection to strikes than do those who have no children of school age."

In the almost twenty years since the first significant collective bargaining contract covering teachers was negotiated in New York City, one would expect that maturity would influence the behavior and outcomes at the bargaining table. The evidence is that this is not necessarily so.

Collective bargaining is a process of compromise - trade-offs in some person's parlance, a situation where neither side reaches all its objectives but neither does either side lose all its proposals. Even where hard bargaining takes place, if there is integrity at the table and mutual respect for the parties prevails, workable solutions can be found. Despite

that seeming optimism we must realize that the outcomes of bargaining are directly related to the personal attributes and goals of the persons at the table. We have long ago concluded that there are two main issues at the bargaining table - one is power; the other is money. Part of the real issue, then, is whether the power phase is sought by individuals or by the individual spokesman for the group.

The political aspects of the bargaining process are very fragile. What is a seemingly mature setting in which reason might be expected to emerge eventually can "change overnight" with changes in personnel i.e. the president of the union, the superintendent of schools, board of education members or, even, the chief negotiators. Then, too, as we have written previously, the political climate in the community could change. Any of these could create an imbalance in the process.

Throughout all of this development, very few school districts seem to have taken a page from the private sector books. How do major corporations, for example, continue to function as non union employers? The answer may be overly simplistic but the fact is that they have learned to "out-union" the union. Where employees do not feel the need to have someone carry the ball for them, they are less inclined to seek redress through the collective bargaining process. Paternalism and strong-arm tactics have no place in labor-management relations. Yet, we still find people who espouse those tactics.

The essential ingredients which one seeks in dealing with human beings are reasonableness and fairness. The gap between administrators and teachers can narrow if they can approach each other with candor and respect.

Before summarizing where this writer feels we are in the collective bargaining process in 1981 let's look at the model which is very similar to that presented as the learning model by Dan Herring.

We'd like to suggest that boards of education, administrators and teachers sit down together and determine what their priorities are for the year ahead. If the parties recognize and accept that salaries hold top priority, they can get on with the business of identifying a list of long and short range priorities with which they can deal before taking up the matter of salaries. All persons involved should recognize that not all the priorities will be met at any one given time; some may go to study committees for consideration during the following year. As the details of meeting these priorities are worked out, they can be reduced to writing so that everyone involved in the process can determine that what appears in print was what was meant. Then, at a pre-determined time, the issue of salary can be tackled. In the meantime, data-gathering has taken place and the information is available for discussion and decision-making. This is not to say that there will not be some hard bargaining on the issues. It does say, however, that, given respect for and trust in each other, the parties are better prepared to reach conclusions which they can recommend to their constituents.

When asked to identify the labor issues which will dominate collective bargaining in the 1980's, administrators polled by the American Association of School Administrators indicated the following areas:

Ranking	Percent of Responses	Issue
1	52%	Salaries
2	36%	Reduction in Force, Declining Enrollment, Job Security
3	22%	Fringe Benefits
4	21%	Management Rights, Control of Schools
5	17%	Lack of Funds

It is well to note that these items deal with items directly related to personnel; there is nothing except, perhaps, lack of funds, which relates directly to improvement of the educational program.

In analyzing the responses one recognized the individuality of the process when professional negotiators commented that "There is no 'best way' to bargain a contract. It depends on local circumstances." Despite this comment, there are those who would consider regional bargaining.

There remains a difference of opinion as to whether the negotiators should be staff or selected from outside the district. Many prefer local insiders for this task citing the desire that insider negotiators remain in the district to see that the carefully prepared contract is administered correctly, recognizing that, frequently, it may be just as difficult to administer a contract as to negotiate it in the first place. On the other hand, a Rand Corporation study, Organized Teachers in American Schools, concluded: "Ideally, the district's chief negotiator should probably be someone who reports directly to the superintendent, has enough authority to obtain necessary information from district administrators, and has access to the school board, at least through the superintendent." In making a case for employing an outsider, usually we can cite three reasons:

1. District personnel often lack the expertise and experience for the complex task of bargaining.
2. Administrators with many job responsibilities cannot do justice to bargaining and their other duties.
3. Hiring an outsider is less expensive than paying a full-time staff member

Contract language is a key issue in arriving at workable contracts. Before agreeing to language which will severely restrict the administration of the school system, negotiators will do well to study typical language which

will make clear the intent of the contracts. Areas of real concern which are being included or which should be avoided in contracts are: Management Rights, Narrow Grievance Definitions, No Strike Clause, Zipper Clause, Maintenance of Standards (Avoid), Grievance Arbitration, Teacher Evaluation, Class Size, School Calendar, and Reduction in Force.

As greater sophistication has entered the bargaining process, negotiators have learned that they must have an assortment of techniques which may be employed at appropriate times in the process. Protecting the integrity of the negotiators is important. As one advisor said, "You earn respect not by concession - making, but by the rationality of your position - even though the other side may strongly disagree with you." If negotiations take place in a constructive atmosphere, there is a better chance for settlement. Polarized positions from the outset lead only to disaster and the possibility of bad-faith bargaining charges. Flexibility is extremely important in bargaining.

We'd like to suggest an impasse resolution procedure based upon the Englewood, Colorado charter provisions which provide for mediation, fact-finding and referendum. A career service commission consisting of five members - two appointed by the governing body, two by the employees and one selected by the other four - conduct the mediation and fact-finding. If either party rejects the board's recommendation, the governing body may call a referendum.

Contract administration is an extremely important aspect of collective bargaining. Future relations with employers are dependent upon the manner in which the contract is administered. This administration will affect employer-employee relations and could well determine the district's position during the next round of bargaining. Throughout the life of the contract, an essential element in good management is to maintain good lines of communication with the employees.

If in the negotiation of the contract, a narrow grievance is included, this will restrict the grievance to terms of the contract. The tendency today is to strive toward such narrow grievance definitions. While the route to arbitration is not taken often, it can be a real problem to the district which does not prepare well for the arbitration proceeding. One recommendation which should be made at this juncture is that a district should have a complaint procedure - over and beyond the grievance procedure. This procedure can be very beneficial to both parties and can short-circuit the formal grievance procedure.

Fringe benefits is an area which is increasing in both complexity and intensity at the bargaining table. Amounts calculated for such benefits vary. While they are very limited in some states such as Texas and Oklahoma, they could be as high as 35% in New York. Thus when hiring a teacher, the cost of fringe benefits should be added to the salary in order to determine the total cost. An area which is increasing in interest deals with sick leave and the formation of sick leave banks. There are both pro's and con's to this idea. One innovative idea is the use of the cafeteria approach for fringe benefits. To accomplish this a fixed amount of dollars is allocated to each employee. The employee may use this in any way he/she wishes within the range of fringe benefits available. This pegs the cost of fringe benefits and, at the same time, permits the employee to have a choice.

Job security is - and will increase as - an issue in the decade of the eighties. While the National Center for educational statistics has predicted the enrollment decline to continue until the mid-eighties, the issue of changing staff patterns has not been addressed. Not only will enrollment decline affect staffing but so will economic conditions. One of the real issues in reduction in force deals with the method of determining who shall be affected. Over-all seniority rights can be devastating. Already, some states have enacted such a procedure by statute and districts have little to say about it. While some districts would like to use reduction in force to rid the districts of the

least competent staff members, caution is urged in tying reduction in force to evaluation. Weeks, months, and even years could be tied in litigation over this issue and every attempt would be a separate action.

We expect that there will be increased efforts to unionize non-union districts. Both the NEA and the APT are striving to force the Congress to enact a national public employees bargaining bill. In this manner, they would hope to force these states without such legislation to provide for public sector collective bargaining. The next step would be the agency shop - thereby effectively undermining the twenty right-to-work states. Given the present temper of the Congress,this may not be in the immediate future but we only need be reminded of legislation which pro-labor forces have succeeded in passing to be cautious about depending upon this attitude to continue. The better procedure would be to make conditions such that the collective bargaining process is not needed in order to provide the benefits and working conditions which teachers desire and to which they may be entitled.

The final scene on the horizon for the eighties is administrator bargaining. Clearly, the issue is whether or not principals are management. We have no problem with that. Where they perform management functions i.e. recommending for employment or termination, development and implementation of budgets, evaluation of staff and other managerial duties, they are management. Add to that the responsibility of the superintendent to involve these persons in management councils where decisions may be formulated and you have the genesis of the management team. This concept, in our opinion, will be utilized to a much greater degree in the decade of the eighties.

In a brief summary, school boards, and superintendents and their administrative staffs have become much more sophisticated in the bargaining process even though they have not, in all respects, regained the ground which they lost with the advent of collective bargaining for teachers. Despite

almost twenty years of bargaining, however, the public sector has not acquired the maturity to deal with collective bargaining in a manner which can produce gains for the district. Where public sector collective bargaining is not now practiced, this procedure is not necessarily inevitable. Unfortunately, states where collective bargaining laws have been enacted most recently appear not to have learned from the lessons which their sister states faced much earlier. In our opinion, one of the poorest such laws was enacted within the last five years. This should be a very poignant lession to states which have not yet faced that issue.

Whether or not public sector collective bargaining becomes universal, there must be a better process for resolving public sector impasses. If teachers and educators, in general, wish to regain the confidence and respect of the public we can no longer permit the spectacle of those whose behavior should be a model to the pupils whom they teach walking picket lines on strike against those whom they are to serve - the pupils. They claim to be on strike against the board of education but they are, in fact, withholding their services from boys and girls in the hope for gains which will benefit them, personally. Lawbreakers are lawbreakers and there is not exception for teachers! The eightees must produce a solution to this dilemma!

ETG/bb
Sept. 1981